

(b) An agency may pay a retention allowance to an employee if the employee is likely to leave the Federal service for any reason.

(c) An agency may not pay a retention allowance to an employee who is likely to leave his or her position for employment in the executive, legislative, or judicial branch of the Federal Government, whether in the same or a different agency.

(d) An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency.

[56 FR 12838, Mar. 28, 1991; 56 FR 40360, Aug. 14, 1991, as amended at 60 FR 33327, June 28, 1995; 60 FR 35601, July 10, 1995; 64 FR 71634, Dec. 22, 1999]

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

(a) *Agency retention allowance plans.*

(1) Before paying a retention allowance under this subpart, the head of an agency shall establish a retention allowance plan.

(2) A retention allowance plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of retention allowances;

(ii) Criteria that must be met or considered in authorizing allowances, including criteria for determining the size of an allowance;

(iii) Procedures for paying allowance; and

(iv) Documentation and record-keeping requirements sufficient to allow reconstruction of the action.

(b) *Higher level review and approval.* Each determination to pay a retention allowance, including the amount of such allowance, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) *Criteria for payment.* (1) Each allowance paid under this subpart shall be based on a written determination that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to re-

tain the employee and that, in the absence of such an allowance, the employee would be likely to leave the Federal service.

(2) The determination required by paragraph (c)(1) of this section shall be based on a written description of the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency's mission.

(3) In determining whether a retention allowance should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) The success of recent efforts to recruit candidates and retain employees with qualifications similar to those possessed by the employee for positions similar to the position held by the employee; and

(ii) The availability in the labor market of candidates for employment who, with minimal training or disruption of service to the public, could perform the full range of duties and responsibilities assigned to the position held by the employee.

(d) *Approval of retention allowances for groups or categories of employees.* (1)(i) An agency may authorize a retention allowance of up to 10 percent of an employee's rate of basic pay for a group or category of employees (excluding individuals covered by § 575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under § 575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance.

(ii) The determination that there is a high risk that a significant number of employees in the targeted category are

likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(iii) The targeted category should be narrowly defined using factors that relate to the conditions described in paragraph (d)(1)(i) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique qualifications, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and performance level.

(While performance level may be a factor used in defining the targeted category, performance level by itself is not sufficient to justify a retention allowance. Performance level may function as a supporting factor in authorizing an allowance or setting the allowance rate only to the extent it directly relates to the conditions in paragraph (d)(1)(i).)

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not more than 25 percent, of an employee's rate of basic pay for a group of category or employees which meets the conditions specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category. Group retention allowance requests must include—(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category or employees meets the conditions specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other conditions and requirements for payment under this subpart

must be met before a retention allowance may be paid to any individual employee under paragraphs (d)(1) or (d)(2) of this section.

[56 FR 12838, Mar. 28, 1991, as amended at 60 FR 33327, June 28, 1995; 63 FR 34121, June 23, 1998; 64 FR 71634, Dec. 22, 1999]

§ 575.306 Payment of retention allowance.

(a) A retention allowance shall be calculated as a percentage of the employee's rate of basic pay (not to exceed 25 percent) and paid in the same manner and at the same time as basic pay—i.e., the allowance shall be paid at an hourly rate for each hour during which the employee receives basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The head of an agency may not authorize a retention allowance for an employee if or to the extent that such an allowance, when added to the employee's estimated aggregate compensation, as defined in § 530.202 of this chapter, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year.

(c) Except as provided in § 575.307(a) of this part, an agency may continue payment of a retention allowance as long as the conditions giving rise to the original determination to pay the allowance still exist. However, at least annually, each determination to pay an allowance shall be reviewed by the agency to determine whether the payment is still warranted, and this determination shall be certified in writing by the approving official.

(d) A retention allowance is not pay for purposes of a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.

[56 FR 12838, Mar. 28, 1991, as amended at 58 FR 50249, Sept. 27, 1993; 60 FR 33327, June 28, 1995]

§ 575.307 Reduction or termination of retention allowance.

(a) The agency must reduce or terminate the authorized amount of a retention allowance to the extent necessary